

**EDGAR A. ALDRINE**  
Claimant

**STATE OF KANSAS**  
Respondent

**STATE SELF INSURANCE FUND**  
Insurance Carrier

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This is a claim for a September 22, 1999 accident. Respondent admits claimant suffered personal injury by accident on that date and that the accident occurred in the course of claimant's employment. Respondent denies, however, that the accident arose out of the employment. Claimant testified that on September 22, 1999 his right knee popped and gave out when he turned abruptly while walking at work. He alleges that his knee injury occurred as a result of his regular job duties as the chief of fraud, abuse and neglect investigations for the Kansas Department of Social and Rehabilitation Services (SRS).

After finding that claimant's knee injury arose out of the employment and that timely notice was given, the Judge awarded claimant workers compensation benefits including permanent partial disability compensation for a 10.5 percent scheduled injury to the leg.

Claimant also contends the Judge erred. Claimant argues his disability award should be based upon the 19 percent rating given by Peter V. Bieri, M.D., rather than a split of the opinions by Dr. Bieri and Peter S. Lepse, M.D., who gave a 2 percent rating. Claimant contends that the ALJ's decision should otherwise be affirmed.

#### **FINDINGS OF FACT**

After reviewing the entire record, the Appeals Board finds:

1. Claimant is Chief of Investigations for SRS. In the course of his job duties, on September 22, 1999 claimant was walking down a hallway on his way to a meeting when he remembered needing some papers. He turned or pivoted to go back when his "knee popped and gave out then."<sup>1</sup>
2. Claimant has a history of knee problems including a prior surgery by Sergio Delgado, M.D., in 1993. But between 1993 and up until about August of 1999, claimant had been able to do his regular work without experiencing any significant knee problems and even used to run the stairs at the capitol for exercise. Claimant stopped running, however, shortly before this accident due to concerns about possibly reinjuring his knee. Following this accident, claimant underwent arthroscopic surgery by Dr. Lepse consisting of a chondroplasty and a partial lateral meniscectomy.
3. As stated, claimant's expert Dr. Bieri, rated the impairment at 19 percent. Respondent's expert, Dr. Lepse, who was also the treating physician, rated claimant's impairment at 2 percent. Dr. Delgado was not asked to offer an impairment rating, but he did comment on the ratings given by Dr. Bieri and Dr. Lepse and suggested that he would place claimant's impairment of function somewhere between the two. Accordingly, Judge Avery's decision to average the two ratings was a reasonable compromise.
4. In the opinion of board certified orthopedic surgeon Sergio Delgado, M.D., the 1993 injury did not constitute a ratable impairment. Dr. Delgado's October 25, 1993 arthroscopy to the same knee had shown a lesion through the cartilage of the weight bearing surface. When claimant returned in March 1994, Dr. Delgado recommended claimant limit his activities. He did not see claimant again until July 1996 when he suggested a repeat arthroscopy and exercises. The arthroscopy was not performed and claimant did not return again until August 1999. Following the September 1999 accident at work, claimant returned to Dr. Delgado. He was treated initially with cortisone injections. When the

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<sup>1</sup> Regular Hearing Tr. at 6.

problem persisted, an MRI was performed which showed a tear of the medial meniscus. Claimant was then referred to Dr. Lepse for surgery. In the opinion of Dr. Delgado, claimant's history of right knee problems did not make him more susceptible to this type of injury.

5. In his Award, the ALJ sets out findings of fact and conclusions of law. It is not necessary to repeat them here. The Board adopts those findings and conclusions as its own.

### CONCLUSIONS OF LAW

1. The Award should be affirmed.

2. Claimant sustained injury to his right knee on September 22, 1999. The Administrative Law Judge found that the accidental injury arose out of claimant's employment with respondent.<sup>2</sup> The Appeals Board agrees.

3. The Workers Compensation Act states that the term "accident" should be construed in a manner to effectuate the Act's primary purpose that employers bear the expense of work related accidents. The Act provides:

"Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and **often, but not necessarily, accompanied by a manifestation of force**. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate **the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment**.<sup>3</sup> (Emphasis added.)

4. Respondent argues that claimant injured his knee in an activity of daily living and, therefore, his knee injury cannot be considered as having been caused by work, citing K.S.A. 1999 Supp. 44-508(e), which provides:

"Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. **An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers**

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<sup>2</sup> K.S.A. 44-501. See also Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

<sup>3</sup> K.S.A. 44-508(d).

**disability as a result of the natural aging process or by the normal activities of day-to-day living.** (Emphasis added.)

Unfortunately, the Workers Compensation Act does not define the phrase “normal activities of day-to-day living.” Attempting to provide that phrase with a reasonable interpretation, the Appeals Board has previously held that K.S.A. 1999 Supp. 44-508(e) is a codification of the Boeckmann<sup>4</sup> decision where the Kansas Supreme Court denied benefits as Mr. Boeckmann’s arthritic condition progressively worsened regardless of his activities. The Court said:

. . . there is no evidence here relating the origin of claimant’s disability to trauma in the sense it was found to exist in Winkelman. No outside thrust of traumatic force assailed or beat upon the workman’s physical structure as happened in Winkelman.<sup>5</sup>

5. The Appeals Board finds that claimant sustained trauma to his right knee when he turned abruptly while walking. That trauma was sufficient to tear the meniscus in his knee. Therefore, he sustained an identifiable accident and the Boeckmann case is distinguishable from this claim. Furthermore, the tear was to a different part of the knee from the prior injury, and the preexisting condition did not predispose him to this injury. This distinguishes this claim from the personal risk analysis in Martin.<sup>6</sup>

6. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.<sup>7</sup> Whether an accident arises out of and in the course of the worker’s employment depends upon the facts peculiar to the particular case.<sup>8</sup>

7. Claimant walks every day at work and when away from work. The injury, however, did not result from walking but from the lateral pressure exerted on the knee from turning abruptly or changing direction. This was an activity that arose out of the nature, condition, obligations, or incidents of the employment.

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<sup>4</sup> Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).

<sup>5</sup> Boeckmann at 736.

<sup>6</sup> Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

<sup>7</sup> Brobst v. Brighton Place North, 24 Kan. App. 2d 766, 771, 955 P.2d 1315 (1997).

<sup>8</sup> Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

The Appeals Board finds, therefore, that claimant's accidental injury is compensable because it did arise out of the employment.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated August 17, 2000 entered by Administrative Law Judge Brad E. Avery, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: George H. Pearson, Topeka, KS  
Marcia L. Yates, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director